Looming large on the fringes of the market are the telephone companies. The telephone companies pose a very highly credible competitive threat because of their specific identities, the technology they are capable of deploying, the technological evolution their networks are undergoing for reasons apart from video distribution, and, last but by no means least, their financial strength and perceived staying power. In 1993, the seven Regional Bell Operating Companies (RBOCs) and GTE had combined revenues in excess of $100 billion. All of the major telephone companies in the United States have plans to enter the video distribution business, and several are currently striving mightily to do so in the face of heavy cable industry opposition, opposition which speaks for itself in terms of the perceived strength of the competition telephone companies are expected to bring to bear.

Recently three of the RBOCs (Bell Atlantic, Nynex and Pacific Telesis) announced the formation of a joint venture, capitalized initially to the tune of $300 million, for the express purpose of developing entertainment, information and interactive programming for new telco video distribution systems. This group has hired Howard Stringer, formerly of CBS, to head the venture and Michael Ovitz of Creative Artists Agency of Los Angeles to advise on programming and technology. A key aspect of this effort is development of navigator software that eventually could replace VCRs and remote control units to help customers find programs and services. Three other RBOCs (BellSouth, Ameritech and SBC Communications) are forming a joint venture with Disney, with a combined investment of more than $500 million during the next five years. The goal of this venture is specifically to develop, market and deliver video programming.

On top of all this activity involving the creation of new distribution paths and delivery of new entertainment and information services to the home, there has been a simultaneous revolution in the sophistication of the communications equipment employed in the home. Today more than 84 million U.S. households have VCRs. In 1994, U.S. households spent as much money purchasing and renting videos ($14 billion) as the combined revenues of all basic cable ($4.6) and the three established broadcast networks ($9.4) in 1993. In 1994, 37 percent of U.S. households owned personal computers. In 1993, estimated retail sales of North American computer software sales were $6.8 billion.

In addition to the purchase and rental of video and information software, recent years have witnessed rapid growth in information services. For example, between 1990 and the end of 1994, the number of subscribers to the top five on-line information services (Prodigy, CompuServe, America On-line, Delphi and GEnie) grew from 1.7 million to 5.58 million. The World Wide Web, which offered access to 130 Internet sites in June 1993, connected 12,000 sites at the beginning of 1995. By one estimate there are 50 to 100 new sites added to the World Wide Web each day. According to one estimate, revenue generated by electronic databases grew by nearly 60 percent between 1992 and 1993, and revenue from consumer on-line services increased by 23 percent during the same period.

To summarize, we are, as has been almost universally remarked, in the midst of an information revolution. That revolution is being driven by advances in microelectronic and fiber optic technology that give no evidence of abating. These advances are transforming virtually *all* marketplaces. Perhaps not surprisingly, the communications marketplace itself is an environment where Information Age change has become particularly manifest. In communications there are two generic "Wow!" charts: One shows productive capabilities rising exponentially with time, and the other shows costs falling exponentially with time. What does that portend, concretely, in the picture we have painted? The answer: Ever expanding and intensifying competition among more and more different types of programming (software) and information services, more and more closely matched to specifically what consumers want, delivered in any of an increasing variety of ways, and, in particular, the specific manner any particular consumer finds most economical and convenient at any particular time.

Harms from Outdated Regulation

To the extent that regulations are perceived as a substitute for competition, the evolution of effective competition obviously mitigates the need for the regulations. Thus, while there may be a need for new regulations to cope with new types of problems posed by the ongoing revolution in communications technology and services (*e.g.*, privacy issues), to the extent that the historical rationale for electronic mass media regulation has been scarcity, concentration and lack of competition, that rationale has been thoroughly undermined by a radical transformation of the industry structure that cannot be denied.

The fact that old regulations are rendered irrelevant in terms of their initial and motivating premises does not, however, mean that their continued existence is without material consequence. What frequently happens — and what we think has happened in the case of the government's broadcast ownership restrictions — is that the result of a failure to reform outmoded regulation is to transform the regulation into a barrier to competition as opposed to a foundation for competition. Instead of protecting consumers, outmoded regulations become a source of potential harm to consumers.

Whether the existence of such barriers matters turns in part on the extent and intensity of competition. Where competition is universal and unyielding, the consequence of a failure to reform is localized to the specific sector whose ability to compete effectively has been effectively restricted. Where competition is otherwise fully effective, the (perverse) effect of the regulation in this circumstance is to disable particular competitors relative to the competition. This poses an issue of equity: Why unfairly restrict the ability of one of many types of competitors to compete effectively? In the absence of otherwise fully effective competition, the perverse effect of outmoded regulations is not only to unfairly harm particular competitors, but to harm consumers as well.

As we have previously detailed, the broadcasting industry has become significantly more competitive during the last twenty-five years and, even more significantly, no longer operates in a competitive vacuum in terms of the existence of alternative video distribution media. It faces increasingly strong competition from a variety of technologically adept, marketing-savvy, financially high-powered competitors. These rivals are deploying pristine new, state-of-the-art networks and financing new programming ventures to produce both conventional and new interactive program material. If free broadcasting is going to remain an economically viable and effective distribution alternative, it is obviously going to have to keep pace. It is going to have to find a way to marshal the large amounts of financial capital necessary to upgrade its technical facilities, and it is going to have to be able to deliver competitively effective program material that either it produces itself or can acquire from independent sources that find broadcasting a sufficiently attractive medium to utilize to reach audiences.

The problem in a nutshell is that the station ownership rules restrain broadcasters from achieving the kinds of competitive synergies that other media can exploit effectively as a matter of course. These constraints limit the large infusion of capital that is needed to ensure competitive parity and the effective exploitation of productive synergies. Broadcast commenters in the FCC's ownership proceeding uniformly argued that increased group ownership would foster more intense competition by permitting broadcasters to achieve economies of scale that would enable them to better compete with cable, which enjoys a dual revenue stream from subscribers as well as advertisers, not available to over-the-air television.

Restrictions on consolidation of stations in local markets would similarly allow more efficient operations. The theoretical/common sense arguments are that there would be significantly beneficial consequences in terms of operating efficiencies if greater resource sharing in terms of administration, marketing and technical facilities could be achieved. Again these are the types of efficiencies that other competitors, notably cable, are permitted to exploit. It is ironic that regulations adopted initially to promote competition and increase diversity now operate to restrict competition and limit diversity.

Absence of Downsides

Repeal of restrictions on multiple station ownership does not constitute repeal of the antitrust laws. Mergers and acquisitions of broadcast properties, whether national or local, would remain subject to the full panoply of antitrust enforcement tools. It is striking to observe the extent to which the FCC, in analyzing its ownership restrictions, is essentially *duplicating* the analysis the antitrust agencies would, in any event, conduct were an actual merger or acquisition proposed. The difference is that the FCC is fruitlessly trying to arrive at an answer in advance and on a generic, rather than a specific, basis. Whether any particular consolidation will pass competitive muster will necessarily depend on prevailing market conditions in particular market circumstances. To the extent that the FCC is evaluating issues the antitrust agencies could and, presumptively, would be evaluating anyway, its evaluation is simply redundant and unnecessary for reasons other than its own bureaucratic imperatives. However, if competition is the issue, the fact that the another part of the government will continue to worry the issue ought to constitute sufficient reason for this part of the government not to have to worry the issue.

The claims of certain network affiliates that community-oriented broadcasting would somehow be threatened are hard to credit seriously, and conflict with observed reality. In the first instance, voluntary exchange is *always* mutually beneficial to the transacting parties. Relaxation of restrictions on voluntary transactions does not *compel* traders to trade; it merely affords parties greater freedom to consummate trades if that is their evaluation of where their self-interests lie. If an affiliate wants to retain its existing ownership status, there is nothing to prevent it from so doing if restrictions on purchases and sales are relaxed.

Some affiliates argue that network ownership skews programming adversely from a public interest standpoint. This is not at all clear. While a network may be able to exert more direct and immediate pressure on management of an owned station to clear network programming and minimize local preemptions, the owned station will be strengthened in other ways by network resources and the observed net impact has heretofore been an expansion of locally originated programming. For example, Fox's owned stations have undertaken to offer an hour of local news at the conclusion of its network feed as well as additional local newscasts during non-prime time. Fox's network rivals in Washington have also expanded their local news coverage, now offering three hours of late-afternoon, early-evening news. All of the Washington network O&Os and affiliates are now offering an early-morning local news show It should also be noted that network clearance does not imply that local programs of particular interest will not, in fact, be delivered. They may simply be carried on other stations. Thus, for example, Channel 50 in the Washington market now carries ACC and Big East basketball games previously transmitted on network stations.

The limited relaxation of the ownership rules heretofore adopted by the FCC which established a twelve-station limit up from seven provides some relevant evidence on the consequences of multiple station ownership for programming. It would certainly be hard to sustain the argument that this change had *any* adverse competitive impact along *any* relevant performance dimension. To the contrary, this relaxation, among its other beneficial impacts, permitted Fox to establish a sufficient base of stations to facilitate the formation of a fourth network. The entry of Fox and other networks not only strengthened the bargaining position of stations as previously discussed, but it also strengthened the performance of both its owned and operated stations (through exploitation of economies of scale and local program upgrades) and those stations that chose to become affiliates (which were, as a result, also empowered to upgrade their programming).[3]

Those who maintain that expanded network station ownership will reduce locally originated programming need to explain why previous relaxation of ownership restrictions has apparently *not* had that consequence. Network and group-owned stations typically do *more* local news and public affairs programming.[4] The result of previous reform has apparently been more networking *and* more locally originated programming as well. Networking can create stronger local broadcast operations, and multiple station ownership can help facilitate the formation of competitively viable networks in an era of universal multimedia competition.

The notion that networking and localism are in fundamental conflict is only an assertion and seemingly belied by the actual facts. A recent National Association of Broadcasters survey underscores an increasing commitment to television news. According to the survey results (reflecting a 69 percent response rate among commercial television stations), news programming costs for ABC, CBS and NBC affiliates were up 4.8 percent in 1993 at a time when other expenses were being cut 1.6 percent. News costs for Fox affiliates were up 23.4 percent while other expenses decreased 4.6 percent. Stations are doing more local news and public affairs programming because it is in their economic interests to differentiate themselves in the local television market and to be competitive.

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[3]The number of Fox stations presenting prime-time newscasts in their communities has increased from 15 to 50 in the last three years. Many Fox stations are also creating *local* morning news and information programs.

[4]In 1984, the National Association of Broadcasters conducted a study of 107 group- and nongroup-owned commercial television stations in 29 markets. (*See* "Public Service Programming By Group-Owned and Non Group-Owned Television Stations," January 1984.) The percentages of a broadcast day (6:00 a.m. through 12:00 midnight) devoted to three categories of public service programming were measured using *TV Guide* listings for a randomly-selected composite week. The results of the study indicated that overall, group-owned stations offer more public service programming than nongroup-owned stations. Group-owned stations devoted 18.4 percent, 10.1 percent and 32.0 percent of an average broadcast day to informational, local and total nonentertainment programming. Nongroup-owned stations devoted 12.9 percent, 6.9 percent and 24.8 percent of a broadcast day to these same program categories.

Conclusion

The United States is today the most information-rich society in history. The idea that there are but few paths to achieve the attention of citizen/consumers is thoroughly belied by the radical *competitive* transformation of the communications marketplace that has occurred during the last quarter century *and is even now accelerating.* We suffer from neither a scarcity of independent communications paths nor one of salient messages. The restrictions on broadcast station ownership that remain in effect are a vestige of a world that no longer exists. Their survival in a new world to which they are ill adapted serves mainly to inhibit the competitive effectiveness of broadcasting relative to other communications media.

Attachment C

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Focusing On the "Success Mode": A Case for Deregulating National Broadcast Television Ownership

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SUMMARY

The radical transformation of the national video marketplace that has taken place over the last quarter century calls into question national ownership rules conceived of at a time when both outlets and program services were relatively scarce. National station ownership rules handicap broadcasters by denying them the full range of competitive synergies that their rivals are free to exploit. As a result, broadcasters will find it relatively more difficult to attract the capital they need to compete, including for the conversion of their operations and program services to ATV. Consumers lose valuable options (e.g., higher quality national *and* local programming). The harm is even greater for those consumers who rely disproportionately on broadcasting because they cannot afford other media.

Rather than focus on potential failure modes as a basis for regulation, the Commission should focus on the "success mode" that almost certainly would result from deregulation. Increased competition, better programming and a stronger television broadcasting infrastructure are ample benefits to justify "letting go."

Thus, the Commission should eliminate its national ownership rules. If it chooses not to, it should certainly not undercut the liberalization of those rules mandated by Congress by tightening its attribution rules so as to weaken broadcast networks.

I. Introduction

Communications markets are changing rapidly. Nowhere is this more apparent than in the explosion of new mass media outlets and services. The continuing growth of DTH services alone has blanketed the country with hundreds of new distribution channels. The Internet has become a significant communications pathway, with the potential of delivering video services that are on a par with broadcast television today. The steady growth of Fox Broadcasting, the emergence of the Warner Brothers and Paramount networks, the addition of several new cable networks each year (with dozens more waiting in the wings) and a wide range of on-line services with at least rudimentary video components all herald a national video marketplace characterized by competition and diversity, rather than by monopoly and scarcity. This is true, recent mergers notwithstanding.

Last year, Congress responded to the new reality by enacting sweeping legislation designed to create a new policy paradigm. The details of this new paradigm have been left to the FCC. Nowhere is it more important for the Commission "to get it right" than in revamping its rules relating to national television ownership.

The Telecommunications Act of 1996 ("the 1996 Act") required the FCC to relax its national television ownership rules. Congress instructed the Commission to drop its limits on the number of commonly-owned television stations and to expand its limitation on audience reach to 35 percent. The 1996 Act does not prevent the Commission from taking even bolder steps if they are justified. We believe they are.

In reviewing its national ownership rules, the Commission should focus on the "success mode"; that is the likelihood that good things will happen if regulation is withdrawn.

Especially, where it is clear (if not evident) that the Commission's national ownership rules stifle the efficient delivery of diverse programming and actually work to impede, not promote competition, the FCC should deregulate. Where competition effectively limits the exercise of monopoly/monopsony power, regulation serves no productive purpose. Such is the case with the Commission's restrictions on national ownership (*i.e.*, the 35 percent audience reach rule). Where regulation has the effect of tipping the competitive balance in favor of one delivery technology over another and of creating a barrier to new entrants, it should be especially suspect. Such is the case with the national ownership rules. These considerations should also inform the Commission's review of its related rules (*e.g.*, its attribution rules).

Before discussing the Commission's proposed treatment of "program suppliers" in its revised attribution rules as they relate to national ownership, we question the need for any national limits on broadcast station ownership (and, therefore, any attribution rules in that context).[1]

II. National Ownership Limits

The Commission's national ownership rules have, ironically in the name of promoting program diversity, actually become a roadblock inhibiting the development of new, competitive sources of programming. Given a highly competitive marketplace and significant economies of scale in program production, development of competitive programming is both expensive and risky. The transactions costs associated with putting together a viable set of stations (especially one consisting overwhelmingly of highly marginal fringe operations) capable of generating an audience sufficiently valuable to advertisers to cover broadcast and program costs are formidable, to say the least.[2] Overcoming these deterrents to investment may well require higher degrees of integration than

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[1] We note that a similar limitation on the reach of cable MSOs (where such a rule has a much stronger public policy rationale; that is, concern about the extension of monopsony power by cable operators) has been struck down by the courts.

[2] The logic of the Commission's rules amounts to saying that A should not be permitted to marry (notwithstanding the implausibility let alone any actual evidence of harm from so doing), because if A *is* permitted to marry, A may marry B, and if A marries B, A will not be available to marry C or D. Of course, if the goal is actually to produce families, rules preventing marriage are obviously hard to rationalize. Mere "availability" without the ability to commit does not lessen risk or encourage the sinking of investments. Prohibitions against marital contracts increase risks, deter marital investments and, thus, presumably discourage the formation of families.

existing rules or rule interpretations permit. That presents the Commission with a dilemma: Its rules restrict with a view ostensibly to promote diversity but the restrictions the rules impose limit rather than promote diversity.[3]

Permitting higher degrees of integration by removing limitations on national ownership and equity participation may well serve to permit effective rationalization of production that might otherwise prove infeasible. Risks may be reduced and shared more efficiently. Larger coalitions of stations may be rendered more feasible. The ability to induce investments in various shared resources may be enhanced. The ability to monitor and discourage opportunistic behavior that undermines enterprise viability may be facilitated. In all of these ways, opportunities for economizing on programming and other operating and marketing costs may be increased and more effective exploited, thus enhancing the chances of network viability.

The benefits of restricting national ownership of television stations in today's environment are difficult to fathom. We are awash in diversity and a variety of outlets for information and entertainment competing for people's attention and dollars. In particular, there are a substantial (and steadily growing)

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[3] An important point to bear in mind is that limits on *national* ownership do not increase the diversity available to any individual. Thus, in the context of national ownership rules, concerns about "diversity" really come down to populist notions and political judgments about the acceptable size of mass media firms.

number of national program services all of which compete fiercely for national exhibition rights in what is, quite clearly, a national market.[4] If future growth of a group owner creates concerns that cannot adequately be addressed by enforcement of the antitrust laws, the Commission can always intervene in that particular case.

While there appear to be no benefits to restricting national ownership, there are costs. However, the costs (*i.e.*, sacrifice of higher quality broadcast programming and stronger local broadcast operations) may not be apparent because it is hard to miss what you have not had. Nevertheless, the adverse economic consequences of the Commission's uneconomic ownership restrictions are real and consist of the higher level of consumer satisfaction necessarily foregone as a result of the rules' operation.

In our view, elimination of the rules will produce no harm, but will empower existing marginal stations to become more effective competitors (strong national and local voices) capable of increasing the diversity of program options available to the public. The Commission should be bold in reconsidering its national ownership rules. Incremental changes won't suffice to salvage rules that serve to reduce, not promote competition and diminish, not increase diversity.

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4 We note, however, that much of the growth has come from the addition of new non-broadcast (*i.e.*, cable) networks. As we have suggested, the Commission's broadcast ownership rules have the perverse effects of strengthening other media and hurting consumers who rely on broadcasting because they cannot easily afford to subscribe to other media.

There is also a question of consistency. How can the Commission justify granting a "national" license to satellite broadcasters while restricting terrestrial broadcast station owners to no more than 35 percent of the market without ultimately relegating the latter to second-class status?

In today's video market, restrictions on national ownership also make it more difficult for new broadcast networks to emerge. The "prime real estate" (VHFs and stronger UHFs) is already taken. To survive, a new network may need to assemble less valuable parcels (weaker UHFs) in more markets (with greater reach); in other words, to produce competitive programming, the marginal network has to find ways of doing more with less. Where perceived risks are greater, means must be found to reduce risks. Where transactions costs of forming and operating an effective coalition of stations are higher, means must be found to economize on transactions costs. This may mean allowing a network to secure its interest through direct investment in order to provide the foundation for a new national broadcast program service.

In short, because new program services are thus inherently more risky, these services need more efficient ways to spread that risk if they are to succeed. Moreover, as competition increases from cable, satellite and other non-broadcast program services, even established broadcast networks will have to become more efficient if they are to compete effectively.

III. The Attribution Rules

Attribution rules go hand-in-hand with restrictions on ownership. The question posed is: what interests in broadcast stations will be attributed for purposes of applying the ownership rule in question?[5]

The Commission has tentatively concluded that it should tighten its attribution rules to prevent the circumvention of its national ownership rules by "program services." It has "determined" that networks will be more inclined to enter into contractual relationships in conjunction with a debt or equity position that will permit them to have *de facto* control of a station. The Commission has, therefore, proposed to make it more difficult (and more costly) for networks to make these investments.

Yet, precisely because it needs to strengthen its existing base or to assemble a new portfolio of stations, a network may be the most likely investor in weak

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[5] Our analysis of the attribution rules addresses the Commission's proposal to tighten the standard where a "program supplier" is involved for purposes of applying its national ownership rules (*i.e.*, the 35 percent reach limit). We note that the Commission could, if it chooses, adopt different attribution rules for applying whatever national and local ownership restrictions are warranted. We see no reason why "program suppliers" should be singled out for stricter scrutiny in the application of either national or local ownership rules.

UHF stations. As such stations are upgraded, advertisers, (at least some) other program suppliers[6] and viewers benefit (the latter through more and better programming, including local news, etc.[7]). By suggesting that program services may have a special incentive to "work around" the attribution rules, the Commission is, in effect, acknowledging the unintended consequence of its own national ownership rules; that is, that they inhibit entry by efficient risk-sharers.

How is it good public policy to keep weak stations weak in the name of preserving local autonomy? At the margin, the FCC's option time and right to reject rules ensure that some autonomy is retained. Also, any investor has an interest in seeing that its investment earn the maximum return whatever his/her strategic interest in that investment might be. But, the real issue posed by the Commission's proposed change in its attribution rules is the economic future of broadcast television (especially marginal stations) when faced with increased

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6 Program suppliers with high quality programming benefit from having a greater number of strong bidders whether it be to supply national (network) programming or local (syndicated) programming.

7 As we wrote nearly two years ago: "Those who maintain that expanded network station ownership will reduce locally originated programming need to explain why previous relaxation of ownership restrictions has apparently *not* had that consequence. Network and group-owned stations typically do *more* local news and public affairs programming. The result of previous reform has apparently been more networking *and* more locally originated programming as well. Networking can create stronger local broadcast operations, and multiple station ownership can help facilitate the formation of competitively viable networks in an era of universal multimedia competition." J. Haring and H. Shooshan, "The Evolving Electronic Media Marketplace and the Devolving Case for Broadcast Ownership Restrictions," March 20, 1995, p. 9.

competition from cable, satellite, and other media, as well as with the considerable costs of conversion to ATV.

IV. The "Success Mode"

Economists frequently speak of so-called "failure modes;" *i.e.*, descriptions of various ways in which things may go wrong with less than maximal efficiency the unfortunate consequence. It is, however, also possible and useful to conjecture how particular policy changes can result in things going *right* with enhanced efficiency and greater consumer welfare the result. There is, in fact, a compelling economic basis for thinking that deregulation will have these types of salutary consequences.

This "success mode" starts with the observation that good programming generally costs a lot of money, and that to produce higher quality programming, larger amounts of capital must generally be invested in program development and production. Such large investments can only be justified when combined with a "distribution machine" capable of transmitting the programs to an audience sufficiently large that, when marketed to advertisers, enough revenue is produced to cover not only the development, production and distribution costs, but also to generate a competitive return on what is a highly risky investment.

In the case of a broadcast network, the distribution machine consists of individual stations and the communication links that tie them together. Note that, when investments are made to upgrade *the internal operations of individual stations* (whether they be for capital equipment, on-air personalities, news gathering capabilities, *etc.*), they produce *external effects for other stations* affiliated with the network. That is because such improvements make it feasible to invest in higher quality network program offerings which will redound to the economic benefit of all the other network participants.

Consider a simple example. Suppose an investment is made so that a "dark" station can commence operations. The network that includes this station now rationally calculates that larger program investments are warranted, given the additional commercial exposures its programming can produce with the new station having commenced operations. Larger investments produce higher quality programs, but higher quality programs, *ceteris paribus*, attract larger audiences on all the network's stations, so all benefit from the greater investment in local capabilities. As noted above, this argument is of quite general applicability in terms of the various different kinds of investments a capitalist would conceivably make in a local station operation.

The organizational problem for the network entrepreneur is how, organizationally, to effectively tie the different constituent parts of the success mode together to make it work. How is the whole enterprise to be organized so that incentives are properly aligned to induce the various different kinds of investments (*viz.*, improved local station operations, development of various shared resources, and higher quality programs)? A key problem confronting the combined enterprise is that individual stations, left to their own devices, will systematically tend to under-invest in upgraded capabilities. That is because they do not reap the benefits their investments generate for *other* stations. Unless stations can be induced to make the investments, the synergistic benefits of coordinated behavior cannot be fully realized.

From an organizational perspective, there is often a question of whether benefits can be effectively synthesized through various contractual arrangements rather than through common ownership. That is, given perceived advantages of integrated operations, is integration most efficiently achieved through incorporation/ownership or through arms-length transactions effected via contractual arrangements? There is extensive economic literature suggesting a variety of circumstances where contractual arrangements may not suffice to induce efficient behavior and where, consequently, more thoroughgoing methods of integration are required. These occur where efficient contractual arrangements require complex and correspondingly costly contracting, where long-term relationships and methods for effecting adaptive behavior are needed, and where threats of debilitating opportunistic behavior exist.

Creating a broadcast network as a means of internalizing the external effects we have described above is precisely the kind of activity wherein these kinds of properties are prevalent and where integration via more extensive ownership may thus be necessary for enterprise success. Several points should be noted in this regard: (1) if contractual arrangements were to be relied upon, they would likely have to be highly complex and, as a consequence, costly to negotiate and enforce; (2) if contractual arrangements were to be effective, they would likely end up closely resembling something akin to ownership; there would be a distinction but not really a difference; and (3) contractual arrangements capable of fully insuring against opportunistic behavior may simply not exist. To the extent contractual arrangements fail to produce sufficiently high levels of "comfort," investment incentives will be attenuated and the organization will fail to fully internalize the external benefits, which supply the motive for the enterprise in the first place.

The ability to overcome organizational hurdles assumes particular significance for new broadcast network enterprises. Such enterprises must rely on comparatively inferior component parts -- marginal (generally UHF) stations operating in marginal locations. Their economic viability may turn critically on the ability to overcome transactional hurdles and to make needed investments sufficiently attractive. In this regard, it seems worth reiterating that poor programming or no programming (in the case of "dark stations") hardly makes a significant contribution to diversity. Nor is economic freedom enhanced by preventing voluntary exchanges that are mutually advantageous to the contracting parties and, moreover, produce significant benefits to third parties (*viz.*, the public that consumes broadcast programming).

The emergence of new national broadcast networks affiliated with Fox, Warner Brothers and Paramount are examples of the "success mode" we describe. These new national program services were made possible by the elimination of the Commission's restrictions on contractual relationships in the production and distribution of network programming (the so-called "fin/syn" rules). The Commission should seize on the opportunity Congress has provided to eliminate restrictions on contractual relationships that relate to national station ownership, not tighten them. In our view, there could be substantial benefits, *viz.,* higher quality national broadcast television services and greater choice resulting from new entry.

V. Conclusion

The radical transformation of the national video marketplace that has taken place over the last quarter century calls into question national ownership rules conceived of at a time when both outlets and program services were relatively scarce. National station ownership rules handicap broadcasters by denying them the full range of competitive synergies that their rivals are free to exploit. As a result, broadcasters will find it relatively more difficult to attract the capital they need to compete, including for the conversion of their operations and program services to ATV. Consumers lose valuable options (*e.g.*, higher quality national *and* local programming). The harm is even greater for those consumers who rely disproportionately on broadcasting because they cannot afford other media.

Rather than focus on potential failure modes as a basis for regulation, the Commission should focus on the "success mode" that almost certainly would result from deregulation. Increased competition, better programming and a stronger television broadcasting infrastructure are ample benefits to justify "letting go."

Thus, the Commission should eliminate its national ownership rules. If it chooses not to, it should certainly not undercut the liberalization of those rules mandated by Congress by tightening its attribution rules so as to weaken broadcast networks.